

BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION POLICY

**TRANSFER OF CONTAMINATED SITES FROM THE
STATE COOPERATIVE PROGRAM TO THE
VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT
PROGRAM**

BER POLICY #BER-RS-VCP-004

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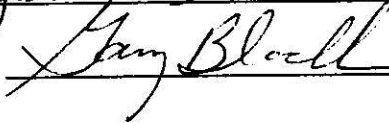
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REVISIONS

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REMEDIAL SECTION POLICY - VCP-004

Voluntary Cleanup and Property Redevelopment Program (VCPRP) **Transfer of Contaminated Sites from the State Cooperative Program**

INTRODUCTION

The State Cooperative Program (SCP), implemented in 1989, is managed within the State Remedial Unit of the Remedial Section. The VCPRP, implemented in 1997, is managed within the Voluntary Cleanup Unit of the Remedial Section. Prior to the VCPRP, most contaminated sites addressed within the Remedial Section were assigned to the SCP. Prioritization based on environmental risk has been used within the SCP to ensure efficacy of the program in terms of allocating resources to address higher priority sites; however, the SCP has and still maintains numerous sites that would generally be considered as moderate to lower risk priority. SCP project management oversight is provided pursuant to negotiated consent orders and other similar agreements.

The VCPRP is designed to address moderate to lower risk contaminated sites, or “properties” as termed in the VCPRP. VCPRP statutes and regulations define criteria that must be met for a property to be considered eligible to participate. These eligibility criteria establish in part that properties addressed through the VCPRP must be moderate to lower priority in addition to restricting the eligibility of properties where contamination is subject to enforcement action and/or existing orders or agreements. Contaminated sites managed within the SCP under existing consent orders or similar SCP agreements are generally considered ineligible to participate in the VCPRP until terms of the order/agreement have been satisfied.

This policy has been developed to establish the conditions to transfer qualifying moderate to lower priority sites that are currently in the SCP to the VCPRP.

POLICY

Contaminated sites managed within the SCP may be allowed to transfer to the VCPRP if:

- 1) All VCPRP eligibility criteria as defined in K.S.A. 65-34,164 (c) can be met and the specific requirements of the SCP Consent Order or Agreement have been met as determined by the KDHE.
- 2) The participating party in the SCP is not responsible for the discharge or release of the pollutants, did not use, handle, store or dispose of specific pollutants, had no active management or control of operations on the property where the release occurred, and is in compliance with all terms of the SCP Consent Order/Agreement at the time of transfer proposal.
- 3) The specific SCP Consent Order/Agreement has a termination provision and the participating party has demonstrated cooperative performance and relations with the SCP program while under the SCP Consent Order/Agreement. Determination of past positive performance may be subject to professional judgement and any final determination will be subject to acceptance by the SCP Program Manager, the VCPRP Coordinator, and the Chief of the Remedial Section.

- 4) Sites proposed for transfer to the VCPRP, regardless of risk priority, may be limited to those that are not complicated by variables including, but not limited to, sites with multiple respondents, sites where litigation specific to the contamination is occurring or is anticipated to occur, and sites with a type(s) of contamination that should be addressed through other SCP subprograms as preferred by the department (such as for mercury metering stations). Transfer from the SCP to the VCPRP is considered to be a privilege; such transfers are therefore subject to SCP, VCPRP, and Remedial Section administrative discretion.
- 5) Written request from the respondent or other recognized entity with specific authority to enter into agreement with the department must be received to initiate program transfer. The request must clearly state a desire for the transfer and indicate that VCPRP processes and procedures are clearly understood.

PROCEDURE

KDHE Responsibilities: Two primary mechanisms will lead to consideration of a site for transfer from SCP to VCPRP. These mechanisms include identification of candidate sites by the SCP Program Manager and formal request by representatives/respondents for transfer of their site to the VCPRP. In either case, the SCP project manager will prepare an internal memorandum verifying that requirements for transfer as outlined in this policy are satisfied. The memorandum must document the conditions outlined in the above section of the Policy to justify the reason for the potential transfer.

Once all appropriate internal concurrence has been provided, as outlined within this policy, the SCP Program or Project Manager will prepare written correspondence to the SCP site contact presenting the option to transfer the project to the VCPRP. The correspondence presenting the option to transfer will identify to the appropriate extent responsibilities for transferring the site in accordance with the following “Transfer Candidate Responsibilities.”

Transfer Candidate Responsibilities: Because of the variability in consent orders and other agreements in terms of oversight reimbursement, and because some SCP sites have no agreements, flexible procedures are necessary for transfer. Listed below are the actions required of the respondent or SCP site contact to provide for transfer of the SCP project to the VCPRP.

- 1) The contact will provide written confirmation to KDHE that transfer of the project to the VCPRP is requested.
- 2) A VCPRP application for the property must be submitted to KDHE with the statutorily required \$200 application processing fee. VCPRP staff will review the application to confirm eligibility for the program in accordance with K.S.A. 65-34,165. Upon affirmation that the property is eligible, VCPRP staff will determine the contamination classification to be conveyed to the applicant and forward a Voluntary Agreement for signature. VCPRP staff will include a statement of outstanding SCP oversight costs, if any, with the transmittal of the Voluntary Agreement to the applicant.
- 3) The applicant will sign the Voluntary Agreement and return the document to KDHE with an initial deposit amount as determined by the following guidelines:

- A. If the SCP Consent Order/Agreement contained provisions for reimbursement of oversight costs, the contact may submit a \$1000 initial deposit amount which will be retained on account and proceed directly to payment of VCPRP oversight costs incurred on a quarterly basis. The applicant would also have the option of submitting an initial deposit based on the contamination classification as outlined in K.A.R. 28-71-7 as opposed to quarterly billing. The option of proceeding directly to quarterly billing is considered allowable as internal KDHE determinations would have already been made that prompt payment of quarterly invoices for oversight reimbursement under the SCP has historically occurred.
 - B. If the SCP consent order/agreement did not contain provisions for reimbursement of oversight costs, or if there is no agreement in place, the applicant will follow standard VCPRP procedures for submitting an initial deposit based on the contamination classification in accordance with K.A.R.28-71-7. Other initial deposit options as provided by existing VCPRP policies may also apply, such as BER-RS-VCP-001, the policy establishing initial deposit provisions for “grouped properties.”
- 4) The applicant will also submit with the Voluntary Agreement and initial deposit a final payment for any outstanding SCP oversight costs, if any, to facilitate termination of the SCP consent order/agreement.

Upon KDHE receipt of a signed Voluntary Agreement, the appropriate VCPRP initial deposit, and payment for any outstanding SCP oversight costs, VCPRP staff will process the concurrent termination of the SCP consent order/agreement with the execution of the Voluntary Agreement which will officially complete the transfer and provide for participation in the VCPRP from that point forward.